



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, LAT, MNDCT

Introduction

On June 17, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”) and seeking authorization to change the locks pursuant to Section 31 of the *Act*.

This matter was set down for a hearing on September 27, 2021 at 9:30 AM with a different Arbitrator. This Application was adjourned for reasons set forth in the Interim Decision dated September 27, 2021.

On January 11, 2022, the Tenant amended her Application seeking an emergency repair Order pursuant to Section 62 of the *Act* and seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

This Application was then set down for a hearing on February 1, 2022 at 11:00 AM with myself, as the original Arbitrator was unable to preside over this matter.

The Tenant attended the hearing. Q.W. and S.M. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Landlord was served with the Notice of Hearing package by hand on or around September 28, 2021 and Q.W. confirmed that he received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant's Notice of Hearing package.

She then stated that she served the Landlord her Amendment by hand on or around January 11, 2022. Q.W. confirmed that he received this as well. Based on this undisputed testimony, as this was served in accordance with the timeframe requirements of Rule 4.6 of the Rules of Procedure (the "Rules"), I am satisfied that the Landlord was duly served with the Tenant's Amendment.

The Tenant then advised that she served her evidence to the Landlord by hand, and while she could not answer when this was done, she stated that it was served over two weeks ago. Q.W. testified that he received the Tenant's documentary evidence on or around October 14, 2021 only, and has not been served with anything since. Apart from a Monetary Order Worksheet submitted to the Residential Tenancy Branch on January 11, 2022, as it appears as if the Tenant has submitted no other evidence after October 26, 2021, I find that this is consistent with the Landlord's testimony. As such, only the Tenant's documentary evidence served on or around October 14, 2021 will be accepted and considered when rendering this Decision. As will be noted later, the Monetary Order Worksheet will not be considered as this claim for compensation will be severed.

Q.W. advised that he served the Tenant the Landlord's evidence in person on September 16, 2021, November 22, 2021, and January 20, 2022. The Tenant claimed to have only received one page of evidence from the Landlord on the aforementioned dates. She then contradicted herself and claimed that she received packages of documentary evidence that were double sided and more than one page. As the Tenant's testimony was inconsistent and contradictory, I find it more likely than not that the Tenant was served with the Landlord's documentary evidence. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the most pressing and urgent issues related to an emergency repair request,

and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an emergency repair Order?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2003, that rent was established at \$544.00 per month, and that it was due on the first day of each month. A security deposit of \$259.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

This hearing was scheduled for an hour and as noted above, claims were severed in order to deal with the most pressing, urgent issues of emergency repairs. Clearly the Tenant appeared to be frustrated with her tenancy as it was her belief that there were many deficiencies in the rental unit that the Landlord was responsible to address. The Tenant was informed of what would be considered an emergency repair under Section 33 of the *Act* and she was asked to outline her specific issues that met these criteria. She listed the following seven concerns:

1. Painting of the rental unit
2. Re-carpeting of the rental unit
3. Replacement of the kitchen counter
4. Replacement of the stove and fridge
5. Locks
6. Repair of the bathroom baseboards
7. Installation of handrails

The Tenant was advised that of the seven issues that she identified, only the issue with the locks would potentially be considered an emergency repair under Section 33 of the *Act*. As such, she was permitted to make submissions on this issue solely, she was reminded that the remaining concerns would be severed, and she was informed that she could apply on those issues in a future Application.

She advised that agents for the Landlord would enter her unit without providing the proper written notice. She stated that on one occasion on November 5, 2021, while she was in the hospital, agents for the Landlord entered her rental unit and “trashed it”. As well, she testified that these people went through her belongings and stole money from her. She stated that she contacted the police about this incident and an investigation was conducted; however, they could not prove her allegations. She did not submit any evidence to support her position.

She also advised that agents for the Landlord entered her rental unit on May 17, 2021 while she was present. No notice was given, and she did not grant this person entry. She stated that she called the police about this incident and that the police talked to this other person. She submitted that she does not know what happened after the conclusion of this discussion with the police, but she stated that she was advised to call the police if a similar incident happens again.

After recording these submissions from the Tenant, it was clear that she did not understand the criteria for what would constitute an emergency repair. Under Section 33 of the *Act*, damaged or defective locks that give access to a rental unit would be considered an emergency repair issue, but there was no evidence of damaged or defective locks. She confirmed that there were no damaged or defective locks and that she was simply requesting the remedy of authorization to change the locks pursuant to Section 31 of the *Act*.

She then unintentionally advised that there was an issue with the heating in the common areas of the building. She was informed that despite not mentioning this in her list of seven items above, this issue could possibly be considered under Section 33 of the *Act* as an emergency repair due to a problem with the primary heating system. As such, she was permitted to make submissions on this issue.

She testified that there has been an issue with the heating system on the common area porch that has been ongoing for years. She claimed that when she informed the Landlord of this issue, he told her that it would not be repaired as no one else had

complained about the lack of heat. She stated that a simple part is required to repair this issue. She then submitted that this past winter was particularly cold in her rental unit, that a maintenance worker provided her with a space heater, and that this person commented that they could not believe how cold it was. She did not provide any documentary evidence to support her allegations. Pictures were submitted appearing to demonstrate the condition of the rental unit, however.

Q.W. advised that the locks to the rental unit were not damaged or defective, thus not an emergency repair. However, he elected to make submissions anyways regarding the Tenant's allegations. With respect to the entry on November 5, 2021, he referenced a notice for entry that was submitted as documentary evidence, and this was done to document the condition of the rental unit. He refuted that the rental unit was "trashed" or that any personal items were stolen. He noted that the Tenant did not submit any evidence to support her "absurd" claims, and he does not believe that the Tenant called the police.

With respect to the entry on May 17, 2021, S.M. advised that the proper notice was provided for entry into the rental unit and that another agent of the Landlord took a contractor into the rental unit. She refuted the Tenant's claims that they forced entry into the rental unit, and she confirmed that they followed COVID protocols. She acknowledged that the police were called and there was never any concern raised by the police about any issue with trespassing.

Regarding the heating issue, Q.W. advised that there is nothing wrong with the heating system, that he has had repair technicians investigate the Tenant's complaints several times, and that it has been determined that the Tenant is making false claims as no repair concerns were discovered. He testified that there are three, large fans in the common areas of the property and the use of all three is unnecessary as it would be too hot. As a result, two of them are intentionally disconnected. This is the root of the Tenant's concerns as it appears to be her belief that these two fans are in need of repair. He stated that the temperature in the hallways is consistently at 18 degrees. As well, he noted that the Tenant did not submit any evidence to support her allegations of there being a problem with the primary heating system.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 33 of the *Act* outlines the Landlord's and Tenant's duties when an emergency repair is required. I have emphasized the applicable subsections with respect to this situation.

Emergency repairs

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,**
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property,** and
 - (c) made for the purpose of repairing**
 - (i) major leaks in pipes or the roof,**
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,**
 - (iii) the primary heating system,**
 - (iv) damaged or defective locks that give access to a rental unit,**
 - (v) the electrical systems, or**
 - (vi) in prescribed circumstances, a rental unit or residential property.**

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Furthermore, given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the claims made by the Tenant, her allegations of agents of the Landlord illegally entering the rental unit clearly do not fall under Section 33 of the *Act* as these claims are not related to damaged or defective locks. As such, I have not made any findings on this issue as it relates to a request for authorization to change the locks. This is not an emergency repair issue and is severed. The Tenant is at liberty to make a future Application for authorization to change the locks.

With respect to the Tenant's claims of an issue with the primary heating system, I note that the Tenant has not provided any documentary evidence to support her allegations that there is a problem with the heat in the rental unit. As such, when reviewing the totality of the evidence before me, I am not satisfied that the Tenant has submitted sufficient evidence to corroborate that there is a legitimate emergency repairs concern. Consequently, I am satisfied that the granting of an emergency repair Order has not been substantiated, and I dismiss the Tenant's Application with respect to a claim for emergency repairs in its entirety.

As an aside, I caution both parties that Section 32 of the *Act* requires that the Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and it must be suitable for occupation by the Tenant. Furthermore, the Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental, and the Tenant is responsible for any damage caused by her negligence.

Conclusion

I dismiss the Tenant's Application for Dispute Resolution, pertaining to an emergency repair, without leave to reapply. The rest of the Tenant's claims have been severed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 1, 2022

Residential Tenancy Branch